



# Texas Task Force on Indigent Defense

June 2010

Volume 8, Number 4

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**Pictured above:** back row left to right: Albert Miraval, Rob Cowie, Dennis Reeves, Ray Keith, Sandra Collett, Anthony Odiorne, Jack Stoffregen Front row left to right: Deborah Williamson, Rusty Wall, Sarah Molzow, Elaine Nauert



West Texas Regional Capital Public Defender Office Team  
Unparalleled level of cooperation among local governments

## Task Force Discretionary Grants to Increase and Expand Public Defender Offices in the State

The Task Force awarded FY2011 Discretionary Grants at its June 9, 2010, meeting. In total \$2.5 million was awarded to five jurisdictions. Dickens County was awarded \$566,701 to create the Caprock Regional Defender Office. This will be a coordinated project with the county and Texas Tech School of Law to establish a clinic and put in place a public defender that utilizes student resources to provide indigent defense services. This program will help solve an issue for a region with a very low appointment rate due to the lack of attorneys in the area.

Lubbock was awarded \$1,570,483 to expand the West Texas Regional Public Defender for Capital Cases based in Lubbock County. The office currently serves 71 of the 85 counties in the 7<sup>th</sup> and 9<sup>th</sup> Administrative Judicial Regions. This grant will provide funding for that office to expand to the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> regions for counties under 300,000 in population—55 more counties—for a total of 140 counties potentially served by this program. (Grants story continues on page 6).

*Thank you Lubbock County! We appreciate the fact that you are willing to support the judiciary in such big ways.*

--Kelly Moore, Regional Presiding Judge, 9th Administrative Judicial Region



*I applaud the efforts of Lubbock County to expand its successful Regional Public Defender for Capital Cases to many more counties in Texas. Thanks to their efforts and the grant from the Task Force on Indigent Defense, smaller counties can rest assured that they won't have to raise taxes to pay for defending a high-profile murder suspect. If the office continues performing like it has in West Texas, we can all be confident that capital defendants will get the highest quality defense, reducing costs for appeals and re-trials, and more importantly, reducing the likelihood of a wrongful conviction or execution.*

*I believe this kind of program, which will improve the quality and efficiency of our justice system while also reducing costs, is exactly the kind of program for which the state should be providing incentives with our scarce resources.*

*-- State Senator Rodney Ellis*



Concepcion, Texas Criminal Justice Council; Scott Himmey, Texas Criminal Justice Council; Lenece White, Office of the Governor, Criminal Justice Division; Mary Hightower, Office of the Governor. Criminal

## Message from the Chair

The Task Force serves as a clearinghouse of information concerning indigent defense. Most recently the Task Force published a white paper on [Programs, Processes, and Technology: An Overview of Discretionary Grants Funded by the Task Force on Indigent Defense](#). Another report lays out meaningful findings in [Representing the Mentally Ill Offender: An Evaluation of Advocacy Alternatives](#). Counties may obtain information from these reports that may enhance efficiencies in processes and provide ideas for improvements in indigent defense services. The Task Force acknowledges those who contributed to the mental health study that was funded in part by a grant from the State Justice Institute and conducted by the Public Policy Research Institute at Texas A&M University in collaboration with the National Center for State Courts and the Council of State Governments, Justice Center. We wish to thank the Texas Department of State Health Services and participating counties which were Dallas, Tarrant and Travis Counties without whom the study could not be possible. Also, the Criminal Defense Lawyer's Associations in Tarrant and Travis contributed by allowing a large number of attorneys to participate in

## Task Force Members:

Chair:  
Sharon Keller  
Presiding Judge, Court of Criminal Appeals

Vice Chair:  
Olen Underwood, Presiding Judge,  
2<sup>nd</sup> Administrative Judicial Region  
of Texas

Roberto Alonzo, State  
Representative

Jon Burrows, Bell County Judge

Alfonso Charles, Gregg County,  
District Judge

Knox Fitzpatrick, Dallas Attorney,  
Fitzpatrick, Hagood, Smith & Uhl,  
L.L.P.

Pete Gallego, State Representative

Wallace Jefferson, Chief Justice,  
Supreme Court

Tony Odiorne, Public Defender,  
West Texas Regional Capital  
Public Defender

Sherry Radack, Chief Justice, First  
Court of Appeals

Jeff Wentworth, State Senator

Glen Whitley, Tarrant County  
Judge

John Whitmire, State Senator

the study. The advisory board for this study included Jim Allison, Shannon Edmonds, Deborah Fowler, David Gonzalez, Barbara Herve, Robin Peyson, Lisa Schreibersdorf, Bryan Shannon, Robert Spangenberg and Dee Wilson.

I would like to remind you about the deadline (August 31) to submit nominations for the Bob Dawson award. There's more information later in the newsletter beginning on page 10 on how to do so.

The Task Force thanks the members of the FY2011 Discretionary Grant Review Team for their assistance to the Task Force. Members are pictured above (page 2).

Sincerely,  
*Sharon Keller, Presiding Judge, Court of Criminal Appeals*

## Message from the Director

This has been an incredible year for indigent defense and we are only at the mid-point. Highlights include: the DOJ National Symposium on Indigent Defense *Looking Back, Looking Forward, 2000-2010* in February. All materials from this event are available electronically [here](#). In February Senator Ellis, the Texas Criminal Defense Lawyers (TCDLA), and others sponsored a one-day Texas Summit on Indigent Defense. Here are links to several presentations by: [Task Force](#) (About the Fair Defense Act), [Maureen Dimino](#) (Misdemeanor Project), and [Dr. Tony Fabelo](#) (Summary of Issues and Strategic Challenges). Then in March Task Force staff and board convened in the Davis Mountains to plan for the upcoming legislative session and the next steps to improve indigent defense. Good thinking and good plans were discussed and outlined. Much of the fruit of this planning session was laid-out by Judge Keller, Dr. Fabelo, and me at the House and Senate hearings held last month regarding indigent defense. Information provided is available [online](#). Three key points that emerged from the hearings were that the State needs to: 1) share more of the indigent costs with local government; 2) provide greater direction and tools to make local practices more transparent; and 3) give clear legislative direction on the issue of independence the public defense function.

On June 2<sup>nd</sup> I attended Rusty Duncan – Public Defender Training in San Antonio. TCDLA new president, Bill Harris of Ft. Worth has appointed Jaime “Jimmy” Gonzalez, Chief Public Defender for Hidalgo County as the new co-chair of TCDLA’s Public Defender Section. Jack Stoffregen, Director of the Capitol Office in Lubbock will continue as Chairman. Travis County Mental Health Public Defender Jeanette Kinard will retire as Public Defender Chair and become co-chair of the CDLP section which plans seminars for lawyers. The Public Defender training on June 2<sup>nd</sup> was well-attended with about 40 lawyers. John Ackerman facilitated a three-hour morning session on “Drama in the Courtroom.” This was an

 **Policies and Standards:**  
**Chair: Knox Fitzpatrick**  
**Pete Gallego**  
**Tony Odiorne**  
**Olen Underwood**

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We're on the Web!  
[www.courts.state.tx.us/tfid](http://www.courts.state.tx.us/tfid)

interactive exercise with all attendees. In the afternoon, Jeanette Kinard showed a new documentary film on her office entitled, "A Different Kind of Law...Holistic Justice for the Mentally Ill" and then talked about the competency issues her office handles with clients on a daily basis. Floyd Jennings of Houston gave a presentation on "Section 46B Issues." The final session was Cameron Vann of the State Bar Texas Lawyer's Assistance Program on "Mental Health Resilience and the Ethical Practice of Law." It was an excellent program from start to finish. Enjoy your summer!

Warmest regards,  
*James Bethke, Director*

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## ***Policies and Standards Update***

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### **Amendments to Policy Monitoring Rules Adopted**

Amendments to policy monitoring rules have been adopted by the Task Force and ratified by the Texas Judicial Council. They are expected to be published in the June 25 issue of the Texas Register and will become effective 20 days after that on July 15. Three of the amendments establish benchmarks for when a jurisdiction is presumed to be in substantial compliance with each of three core requirements. These benchmarks are: a presumption that the jurisdiction conducts prompt magistrate warnings if the hearings occur within 48 hours of arrest in at least 98% of the monitor's sample; a presumption that the jurisdiction makes timely appointments of counsel if indigence determinations are timely in at least 90% of the monitor's sample; and a presumption of a fair, neutral, and non-discriminatory appointment system if the top 10% of appointed attorneys receive less than three times their respective share of appointments at each level of proceedings (felony, misdemeanor, juvenile cases).

Other amendments relate to report issuance procedures and responses by counties. One sets a 30-day time limit for a county to respond to a follow-up monitoring report, with the opportunity to request an extension of up to 30 more days. The final change establishes a procedure to address a county's failure to timely respond to a policy monitoring report by directing staff to send a certified letter to several local officials notifying them that all further payments will be withheld if no response to the report is received by the Task Force within 10 days of receipt of the letter. If funds are withheld under the section, then the funds will not be reinstated until the Task Force or the Policies and Standards Committee approves the release of the funds. You may review the adopted rules [here](#).

***For additional information please call Joel Lieurance, Policy Monitor at (512) 936-7560.***



The mission of the Task Force on Indigent Defense is to improve the delivery of indigent defense services through fiscal assistance, accountability and professional support to State, local judicial, county, and municipal officials. The purpose of the Task Force is to promote justice and fairness to all indigent persons accused of criminal conduct, including juvenile respondents, as provided by the laws and constitutions of the United States and Texas.

## County Indigent Defense Plan Reviews Underway

Plan review is a bi-annual process of examining all 254 plans that are mandated to be submitted by all counties November 1 of odd-numbered years. University of Texas School of Law interns will be assisting in review the six core requirements of each plan and contact counties if the plan needs to be amended. As there was an entirely new plan submission process last year, this will be a huge undertaking. We ask for counties' patience during this process; however once it is complete, the information will be accurate and accessibility will be greatly improved. In addition, any future amendments to plans will be possible in a much more efficient manner that will benefit counties in the long run with plan maintenance and submission as required by statute.

The interns working this summer on this project are Nicole Bartel and Jessa Haugebak.


As a reminder, if at any time a county wishes to [edit their plan](#), it may do so.

*For additional information please call Wesley Shackelford, Deputy Director/Special Counsel at (512) 936-6994.*

## Fiscal and Monitoring Reports will be Published on the Task Force Web Site

Beginning with monitoring visits conducted in FY2011, the Task Force will publish finalized fiscal and policy monitoring reports on its web site. Reports are considered final after the respective county has responded to the report and the Task Force Board has had an opportunity to review the report. The web site will list a short summary with overall findings and a link to the full report.

*For additional information please call Joel Lieurance, Program Monitor at (512) 936-7560.*

 **Grants and Reporting:**  
**Chair: Glen Whitley**  
**Jon Burrows**  
**Sharon Keller**  
**Sherry Radack**  
**Alfonso Charles**

## ***Grants and Reporting Update***

### **Discretionary Grants (continued from page 1)**

Bell County was awarded \$397,150 to build a web-based core solution that tracks the county's compliance with the Fair Defense Act from time of arrest through payment of Attorney Fee Vouchers.

Taylor County was awarded \$41,498 to purchase equipment to develop a multi-county video conferencing system with Callahan and Jones Counties. Taylor County 104<sup>th</sup> District Judge Lee Hamilton stated, "The grant will help Taylor continue to provide better legal representation for indigent defendants, especially in those in jail."

Dallas County was also awarded \$256,773 for videoconferencing. These funds will allow the county to immediately begin to resolve issues between city jails and Dallas County Jail through the expansion of existing videoconferencing connectivity.

Three other programs, including the Harris County Public Defender Office and mental health initiatives in Tarrant and Montgomery Counties, were granted extensions and will be taken up by the Task Force later this summer.

The [press release](#) about these awards is on the [Task Force website](#).

*For additional information please call Bryan Wilson, Grants Administrator at (512) 936-6996.*

### **Distribution of Grant Funds by Direct Deposit**

For counties still receiving their grant payments by warrant (check), please consider direct deposit for receiving your payments. There are several advantages to receiving your payments by direct deposit versus by warrant, such as the ability to trace your payments, no deposit delays, prompt availability of funds and no worry about a lost or stolen warrant.

To begin receiving your payments by direct deposit, simply complete the Vendor Direct Deposit Authorization Form 74-176 and return the completed form back to us. This form is available on the Comptroller's state government website at: [www.cpa.state.tx.us/taxinfo/taxforms/74-176.pdf](http://www.cpa.state.tx.us/taxinfo/taxforms/74-176.pdf). If assistance is needed to fill out the form or you have additional

questions, a customer service representative is available Monday thru Friday, 8:00 a.m. to 5:00 p.m. by calling 1-800-531-5441, ext. 3-3600 (toll-free) or 512-463-3360 (in Austin) or by email at [www.claims.pin@cpa.state.tx.us](mailto:www.claims.pin@cpa.state.tx.us).

***Please call Sharon Whitfield, Budget and Accounting Analyst, at the Task Force office, toll free in Texas at (866) 499-0656, if you have any questions about grant payments or other disbursements.***

## Advance Payment Notification (APN)

The State Comptroller now offers Advance Payment Notification (APN) to state vendors who receive funds by direct deposit. This feature will provide state vendors with a one-business-day advance notice before a direct deposit payment posts to their bank account.

To take advantage of this new service, please log onto the State Comptroller's website at: [www.cpa.state.tx.us/fm/payment](http://www.cpa.state.tx.us/fm/payment). A page will come up listing payment services for state vendors and state employees. Go to the state vendors section, page down to resources and click on Advance Payment Notification. This page will explain the features of APN. To take advantage of this new feature, go to the box to the right and click on the Advance Payment Notification Authorization (74-193) form. Follow the instructions and complete the form. You may mail or fax the form back to the Comptroller; the address and fax numbers are located at the bottom of the form.

We hope this service will be of benefit to your county's accounting and/or audit section.

***Please call Sharon Whitfield, Budget and Accounting Analyst, at the Task Force office, toll free in Texas at (866) 499-0656, if you have any questions about grant payments or other disbursements.***

# Fiscal Monitoring Program

FY 2010 Fiscal Monitor Visits		
County	Date of Site Visit	Type Visit
Travis	September 15, 2009	grant
Hood	October 14, 2009	tech assist
Delta	October 15, 2009	tech assist
Johnson	October 28, 2009	tech assist
Burnet	November 17, 2009	tech assist
Bexar	February 17-19, 2010	fiscal
Kaufman	February 23-25, 2010	fiscal
Bee	March 5, 2010	tech assist
Hunt	March 8, 2010	grant
Bowie	March 9-11, 2010	fiscal
Red River	March 11, 2010	fiscal
Llano	April 20, 2010	fiscal
Burnet	April 21, 23, 2010	fiscal
Bastrop	April 28, 2010	tech assist
Cameron	May 18-21, 2010	fiscal
Willacy	May 20, 2010	fiscal

## Summary of Findings:

In conducting fiscal monitoring reviews throughout the state, there are three consistent findings or issues in managing indigent defense services: reporting of criminal indigent defense expenditures, reporting of unallowable costs, and tracking continuing legal education (CLE) hours.

### 1. Criminal Indigent Defense Expenditures

In numerous instances, licensed investigative, expert witness, and other direct litigation expenses are not correctly placed in the appropriate category of service. The categories of service consist of attorney fees, licensed investigative, expert witness, and other direct litigation expenses. Counties should correctly place the criminal indigent defense expenses in the appropriate category of services. Section 71.0351(e), Texas Government Code, requires that counties report case information showing the total amount expended on indigent defense services and provide an analysis of the amount expended for these categories. It is crucial that counties develop payment procedures to accurately capture the case and fiscal data in establishing grant eligibility.

### 2. Unallowable Costs

Some counties report general government and prosecution costs (unallowable costs) as criminal indigent defense expenditures. General government costs include routine fees and expenses associated with court transcripts, reporters, and interpreters. The prosecution costs include attorneys, expert witnesses, mental health evaluations, and



licensed investigation expenses. General government and prosecution costs are not criminal indigent defense expenditures.

### **3. Continuing Legal Education (CLE) Requirement**

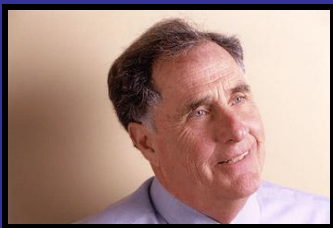
The CLE requirements are not consistently documented for attorneys on the public appointment list. Attorneys appointed to represent indigent defendants or juvenile respondents must complete a minimum of 6 hours of CLE pertaining to criminal or juvenile law during the 12-month reporting period in accordance with Title 1, Chapter 174, Texas Administrative Code. CLE may include self-study, teaching at an accredited continuing legal education activity, attendance at a law school class or legal research-based writing. The CLE requirements must meet the Task Force standards and county local plan.

**For questions or technical assistance, please contact: Carol Conner, Fiscal Monitor; 512.936.7561; toll-free 866.499.0656; email: [carol.conner@courts.state.tx.us](mailto:carol.conner@courts.state.tx.us)**

## **Decision on Recoupment of Costs from Indigent Defendants**

On March 24, 2010 the Court of Criminal Appeals ruled in *Mayer v Texas* that there was insufficient evidence to support the trial court's order that the defendant reimburse the county for court appointed attorney fees of \$2,850. Under Article 26.05(g), Code of Criminal Procedure the trial court has authority to order reimbursement of appointed attorney fees if the court determines that a defendant has financial resources that enable him to offset, in part or in whole, the costs of the legal services provided. The Court of Criminal Appeals affirmed the 7<sup>th</sup> Court of Appeals ruling that the record "does not contain any such determination or finding by the trial court that Appellant had any financial resources or was 'able to pay' the appointed attorney fees." It also noted evidence in the record that "demonstrate[d] that, before trial and within two months of the conclusion of the trial, Appellant was indigent and qualified for court appointed counsel." It concluded that, in the absence of "evidence to demonstrate Appellant's financial resources to offset the costs of the legal services, the trial court erred in ordering reimbursement of appointed attorney fees." In reaching this conclusion, the Court of Criminal Appeals held that a defendant does not have to complain about the sufficiency of evidence of his financial resources and ability to pay at trial and may raise the claim for the first time on appeal.

***For additional information please call Wesley Shackelford, Deputy Director/Special Counsel at (512) 936-6994.***



Bob Dawson was a beloved law professor and a champion of juvenile justice and indigent defense (Photo credit: Wyatt McSpadden).

## Call for Nominations for Dawson Award

The Robert O. Dawson Indigent Defense Distinguished Service Award honors and acknowledges the late Professor Robert O. Dawson's outstanding contributions and symbolizes his lasting impact on the Texas Fair Defense Act and the Task Force. Each year the award will recognize outstanding service by a group or an individual that makes an outstanding contribution to the improvement in the way Texas provides counsel for its poorest citizens accused of crimes.

A complete [Award Nomination Form](#) must be submitted for each nomination. Award Nomination Forms and supporting materials should be submitted for the 2010 award until the final deadline of August 31, 2010 (5:00 p.m.). Additional materials such as news stories, magazine articles, or other appropriate commentaries may be included with a nomination. However, please limit each nomination to 10 pages, including supporting materials. Please do not submit videotapes or tape recordings.

Please send completed Award Nomination Forms to:

Task Force on Indigent Defense

Post Office Box 12066

Austin, Texas 78711-2066

Physical Address: 205 West 14th Street, Suite 700, Austin, Texas 78701

If awarded, the 2010 award will be presented at the December Task Force meeting. Past recipients of the award include: Robert O. Dawson (2005), Dr. Tony Fabelo (2006), Don Hase (2007), and Bob Spangenberg (2008).

*Additional information available at Task Force's web site: <http://www.courts.state.tx.us/tfid/>; or, contact Terri Tuttle, Executive Assistant/Information Specialist at [terri.tuttle@courts.state.tx.us](mailto:terri.tuttle@courts.state.tx.us) or 866-499-0656 (463-8015 in Austin).*

## Mark Your Calendars for the 8<sup>th</sup> Annual Indigent Defense Workshop and Submit Your Ideas for Content/Presentations

Staff will soon be preparing for this year's workshop and requests readers of this newsletter to submit their ideas for presentations that will most assist counties in the area of indigent defense. In the past presentations have addressed best practices ("what's working"), determining indigence, representing mentally ill offenders, processes and more. Video downloads are available from the [2008](#) and [2009](#) workshops. We would also like to know if you would be interested in participating in the workshop (speaker or attendee). We often ask county representatives to present on their successful programs to share the information with other counties.

The workshop will be a day and a half October 28-29, 2010 at the Texas Association of Counties in Austin.

If you wish to provide feedback to this newsletter article, please contact Terri Tuttle at (512) 463-8015 or email her at [terri.tuttle@courts.state.tx.us](mailto:terri.tuttle@courts.state.tx.us).

*Additional information available at Task Force's web site: <http://www.courts.state.tx.us/tfid/>; or, contact Terri Tuttle, Executive Assistant/Information Specialist at [terri.tuttle@courts.state.tx.us](mailto:terri.tuttle@courts.state.tx.us) or 866-499-0656 (463-8015 in Austin).*